

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANA I. TARANGO

Claimant

VS.

HYPLAINS BEEF, L.C.

Respondent

AND

WAUSAU INSURANCE COMPANIES

Insurance Carrier

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Docket No. 198,846

ORDER

Respondent and claimant both appeal from an Award entered by Special Administrative Law Judge Stacy Parkinson on August 13, 1997, and amended by an Order Nunc Pro Tunc dated August 25, 1997. The Appeals Board heard oral argument February 25, 1998.

APPEARANCES

Claimant appeared by her attorney, Stanley R. Ausemus of Emporia, Kansas. Respondent and its insurance carrier appeared by their attorney, D. Shane Bangerter of Dodge City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board reviewed and considered the record identified in the Award. The Appeals Board adopted the stipulations listed in the Award.

ISSUES

The Special Administrative Law Judge awarded benefits for 6.5 percent permanent partial disability to the body as a whole. Claimant contends the award should have found a 13 percent permanent partial disability. Respondent, on the other hand, contends claimant has not proven she suffers from a permanent impairment as a result of an accidental injury arising out of and in the course of her employment by respondent. Respondent also contends the Special Administrative Law Judge improperly failed to credit the temporary total disability and temporary partial disability benefits paid.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds claimant has not proven she suffers from a permanent compensable impairment and the Award by the Special Administrative Law Judge should be modified.

The parties have stipulated that claimant met with personal injury by accident arising out of and in the course of her employment on January 22, 1995. According to claimant, she experienced pain in her low back and leg which came on suddenly. After reporting the injury, claimant was sent home and later sent to Dr. C. Reiff Brown. Dr. Brown treated claimant with injections, medication, therapy, and a back brace. Dr. Brown also took claimant off work for two to three months.

Claimant testified that when she returned to work she still had trouble and could not do the work. Claimant was again sent home and was later terminated for giving false information about her medical history. Claimant's last day of work was January 26, 1996, and her termination report was dated May 21, 1996. Claimant testified she had not worked since leaving her employment with respondent and she did not believe she could work.

Respondent contends claimant has not proven she has any permanent disability from her injury. Based on the independent medical report from Dr. Don Miskew and based on claimant's lack of credibility, the Appeals Board agrees.

Claimant originally brought two claims, the present claim on appeal for alleged low back and related injuries (Docket No. 198,846) and one for alleged injuries to her upper extremities (Docket No. 205,488). After respondent discovered claimant had worked for another employer under a false name and had recovered \$45,000 for the same alleged injuries, claimant dismissed the claim for upper extremity injuries.

The record in this case contains numerous admissions by claimant that she had lied about her prior employment, prior medical history, and prior workers compensation claim on employment applications and under oath in her deposition. That history substantially undermines claimant's credibility in this case.

In addition, the physician appointed to conduct the independent medical examination, Dr. Miskew, concluded it is impossible to determine an impairment rating.

She appears to have either an overlying anxiety problem, or is malingering and I feel that any degree of impairment rating apportion [sic] to this lady on an organic basis would be impossible to do at this point in time.

Dr. Miskew reached this conclusion after what he described as a bizarre examination with bizarre findings, a great deal of functional overlay, and many modalities of positive Waddell signs for symptom magnification.

The Appeal Board concludes claimant has failed to prove by a preponderance of the credible evidence that she suffered permanent disability from the alleged accident.

Respondent does not dispute the award of temporary total disability, temporary partial disability, or medical benefits paid.

AWARD

WHEREFORE, the Appeals Board finds that the Award and Order Nunc Pro Tunc entered by Special Administrative Law Judge Stacy Parkinson, dated August 13, 1997, and August 25, 1998, respectively, should be, and are hereby, modified.

WHEREFORE, the Appeals Board finds and concludes claimant's request for permanent partial disability benefits should be, and is, denied.

Claimant is entitled to 6.57 weeks of temporary total disability benefits at the rate of \$319, or \$2,095.83, and \$959.40 in temporary partial disability compensation for a total award of \$3,055.23, all of which is due in one lump sum less amounts previously paid.

Claimant is also awarded medical expenses previously paid by respondent in the total amount of \$9,204.05 as reflected in respondent's submission letter of March 24, 1997.

Claimant's request for future medical expenses is denied.

The Appeals Board also adopts all other orders in the Award not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
D. Shane Bangerter, Dodge City, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director